

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

Vahe Sarkissian, M.D.

Case No. 800-2016-025851

**Physician's and Surgeon's
Certificate No. A90620**

Respondent

DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on September 8, 2017.

IT IS SO ORDERED August 10, 2017.

MEDICAL BOARD OF CALIFORNIA

By: Michelle Anne Bholat M.D.
**Michelle Anne Bholat, M.D., Chair
Panel B**

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In the Matter of the Accusation Against:

VAHE SARKISSIAN, M.D.

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No. A90620

Respondent.

Case No. 800-2016-025851

OAH No. 2017030240

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on June 27, 2017, in Oakland, California.

Keith C. Shaw, Deputy Attorney General, represented Complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Charles J. Smith, Attorney at Law, represented Respondent Vahe Sarkissian, M.D., who was present.

The record closed on June 27, 2017.¹

FACTUAL FINDINGS

1. Complainant Kimberly Kirchmeyer issued the Accusation in her official capacity as Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

¹ On July 3, 2017, a letter from Kevork M. Garabedian was received by OAH. Copies of the letter were forwarded to Mr. Shaw and Mr. Smith and no response was received. The letter was untimely, in that it was received after the record closed and neither party requested the record be re-opened. Accordingly, the letter was not received in evidence or considered.

2. On March 25, 2005, the Board issued Physician's and Surgeon's Certificate No. A90620 to Vahe Sarkissian, M.D. (Respondent). It is scheduled to expire on July 31, 2018, unless renewed.

3. On June 21, 2017, Administrative Law Judge Jill Schlichtmann issued an Interim Suspension Order pursuant to Government Code section 11529. The Order prohibited Respondent from:

- (a) Practicing or attempting to practice as, or representing himself to be, a physician and surgeon;
- (b) Possessing, prescribing, dispensing, furnishing, administering or otherwise distributing any controlled substance as defined by Health and Safety Code sections 11150 et seq., or any dangerous drug as defined by Business and Professions Code section 4022;
- (c) Recommending or approving the use of medical marijuana;
- (d) Possessing or holding his physician's and surgeon's wall and wallet certificates, any and all prescription pads and blanks, Drug Enforcement Administration forms, and any and all drug and Enforcement Administration permits, which documents shall be surrendered by him to the Medical Board pending adjudication of this matter.

Respondent's professional background – brief overview

4. In 1995, Respondent graduated from the University of California at Los Angeles with a Bachelor of Science degree in biology. In 2001, he received a Doctor of Medicine degree from Chicago Medical School in Illinois. Respondent was a resident in neurosurgery from February 2007 to February 2009 at Tulane Medical School in New Orleans. He was terminated from the program. He is not board certified or board eligible in any specialty. Respondent's most recent employment as a physician was at the Pacific Occupational Health Clinic (POHC) in South San Francisco. He was employed there from March 2015 until October 2016. The clinic saw workers' compensation patients and has since closed.

Prior license discipline

5. On August 24, 2012, the Board revoked Respondent's certificate, but stayed the revocation for one year and "immediately suspended" Respondent's certificate for one year. Respondent was ordered to comply with the Board's prior Order issued December 19, 2011, compelling him to submit to a mental examination, within 30 days.

The 2011 Order was based upon an out-of-state suspension order that had been issued by the Louisiana State Board of Mental Examiners. The Louisiana Board had suspended Respondent's license based on charges that Respondent was unable to safely practice because

of psychiatric disorders and chemical dependency, and that he had provided false answers on his application.²

6. By letter dated January 7, 2013, the Board informed Respondent that the psychiatric evaluation he had undergone pursuant to the 2012 Order was complete and that the evaluator concluded that he was capable of safely practicing medicine. He was reminded that, nonetheless, he remained suspended from practice until August 25, 2013.

Current Accusation

7. The First Amended Accusation alleges that Respondent committed unprofessional conduct by his attempts to obtain controlled substances by fraud for his own use and fill prescriptions he knew were false. It also alleges that he is unable to practice medicine safely due to a mental impairment, based upon an evaluator's opinion that he suffers from multiple substance use disorders and major depressive disorder. Respondent filed a notice of defense and this hearing followed.

8. The standard of proof applied in making the factual findings is clear and convincing evidence to a reasonable certainty.

ALLEGATIONS OF UNPROFESSIONAL CONDUCT

- MARCH 29, 2016, ARREST

9. Complainant alleged that Respondent was arrested on March 29, 2016, for a violation of Business and Professions Codes section 4060, possession of a controlled substance without a prescription. A police report in evidence establishes that this is correct. Respondent was stopped for a traffic violation, and consented to a search of his car. Officers found an unlabeled prescription bottle containing Clonazepam³ and eight additional Clonazepam pills in a contact lens case. Respondent admitted they were his pills, but he did not have proof that they had been prescribed for him.

Complainant also alleged "Law enforcement noted that Respondent was acting 'amped' and 'erratic' as if he was possibly under the influence of a controlled substance." This information was not located in the police report and it was not proven that the statements were made.

10. A supplemental report states that on May 27, 2016, Respondent brought an empty prescription vial to the police station. The officer wrote in the report that Respondent:

² In 2009, the Louisiana Board dismissed its accusation against Respondent.

³ Clonazepam is a prescription sedative/anti-anxiety medication. It is a benzodiazepine and a Schedule IV controlled substance.

provided me with an empty prescription vial containing the following information:

RX 3737336-00324

Dispensing pharmacy, Walgreen's Drugs

Date of the prescription was 3/17/2016

Medication was prescribed to [Respondent]

Prescribing physician was Joshua Gibson MD

Clonazepam 1 mg tablets.

I photographed the prescription medication vial and later uploaded the photographs into evidence.

Complainant's exhibit contains four pages of photos of prescription bottles following the police report. None of the photos appear to be any of the photos referenced above. No additional evidence was received regarding this arrest or the disposition of the case.

11. Although it was proven that Respondent was arrested, a violation of Business and Professions Code section 4060 was not proven.

- EVENTS OF AUGUST 14-15, 2016

12. Sharon Cheong-Wong is a pharmacist working as a pharmacy manager at Walgreens Pharmacy in South San Francisco. On Sunday evening, August 14, 2016, she received a telephone call from a male voice identifying himself as Dr. Pinckney, requesting that a prescription be prepared for a Virginia Massey. Call-in, or phone order, prescriptions require the name of the medication, a patient name, date of birth, quantity, directions, and the provider's name and telephone number. Cheong-Wong filled out a Walgreens script with the information she was given. The request was for Clonazepam (1 mg) and Phentermine⁴ (37.5 mg). The caller provided the physician DEA number of BP9129075 and gave a call back/verification number of 888.931.1115.

13. Cheong-Wong called the verification number given, but it was not a valid number. She therefore decided not to fill the prescription. At approximately 9:45 p.m. on August 14, Respondent entered the Walgreens and requested the Massey prescription. He refused to provide identification to the cashier. Cheong-Wong told Respondent that she could not fill the prescription because she could not verify it with the doctor. Respondent was upset. He said it was for his sister and that he was in a hurry. After 10 to 15 minutes, Respondent left the store.

14. The next morning, Cheong-Wong located a telephone number for Dr. Michael Pinckney, who holds DEA number BP9129075. He told her that he had not called in a prescription and that he did not know who Virginia Massey was.

⁴ Phentermine is used for weight loss.

15. Respondent testified that he shopped at the South San Francisco Walgreens five or six times per week. He noted that there is surveillance video of his presence that night, and does not deny being present. He does not recall why he was there, but surmises that it was to pick up a prescription for himself, and that he might have asked Cheong-Wong if it was ready. But he denies saying Massey was his sister or attempting to obtain an illegal prescription for himself.

16. Cheong-Wong's testimony was consistent with her report to the police and entirely credible. She had no reason to make up the events she related. In light of the strong evidence to the contrary, Respondent's denials were not believable. The evidence demonstrated that Respondent attempted to obtain fraudulent prescriptions on August 14.

- EVENTS OF AUGUST 18, 2016

17. Frederick Ledesma is a pharmacist and was working at the Walgreens in South San Francisco in August 2016. Ledesma worked the "graveyard" shift, 9:45 p.m. to 8:30 a.m. Respondent came to the pharmacy at approximately 1:52 a.m. on August 18 and picked up a prescription for himself for Adderall.⁵ He then presented a prescription for two medications: Sytomet (treats a thyroid condition) and Jardiance (treats diabetes). The patient was listed as Suzy Sarkissian. The prescription form identified Edmonds Collins, Physician Assistant, POHC, as the prescriber. Ledesma could not read the signature. He scanned it into the database and typed in the information. This prompted a "red flag" alert stating "FAKE RXS. BLANKS STOLEN." Ledesma told Respondent that he was not able to fill the prescriptions at that time and that he would need to confirm them by contacting the doctor's office. Respondent then left the premises.

Ledesma reported this information to Cheong-Wong when she arrived at work. She took over and called Collins, who told her that the prescription pads had been stolen from POHC.

18. The police report concerning both August incidents states that an officer spoke with Edmonds Collins on August 24, 2016, who verified the script forms had been stolen and that he had not issued prescriptions to a Suzie Sarkissian. A handwriting exemplar provided by Collins did not resemble the signature on the prescription. Collins told the officer that he recognized the name of Sarkissian, in that Respondent had been employed at POHC for approximately one year. They shared an office at POHC, but had separate desks.

19. Respondent was arrested on August 26, 2016, at POHC. He had in his possession two prescription forms associated with the pad reported stolen. One was the yellow carbon copy of the script for Sarkissian he had given to Ledesma and the other was blank.

⁵ Adderall is a prescription stimulant containing amphetamine and dextroamphetamine salts. It is a Schedule II controlled substance.

20. Respondent testified that the prescription form he used did not have his name on it, but he had been told his forms were not ready yet and that it was acceptable to use other forms so long as he signed his name. He also said that Collins was his physician assistant. Respondent asserts that his employment at POHC was his first time in private practice and that he was told this was legal. The manager of POHC had custody of the pads and Respondent believes he had recently received the one he used. He had "no way of knowing" that POHC had reported the pads stolen. Respondent stated that it was a mistake to take the advice of others in this regard, and that he "could have been more authoritative in [his] role" at POHC.

21. Respondent's explanations for using prescription forms without his name and that had been reported stolen were not convincing. It is not reasonable to believe that POHC would deliberately or erroneously report forms had been stolen, and then give them to physicians to use. It remains unclear why Respondent would engage in this behavior, given that he was a licensed physician at the time with authority to write prescriptions for patients. But the evidence established that he presented fraudulent prescriptions to be filled.

ALLEGATIONS OF MENTAL IMPAIRMENT

22. Respondent was first diagnosed with Attention Deficit Disorder (ADD) while in medical school in Chicago. He had trouble focusing and psychiatrist Ann Deiden, M.D., prescribed Adderall.

23. Respondent moved to San Francisco for an internship, and in 2003 came under the care of psychiatrist Joshua Gibson, M.D. Respondent has been treated by Dr. Gibson since that time, a total of approximately 13 years. Respondent subsequently moved to New Orleans to undertake a residency program at Tulane Medical School.

24. In connection with his participation in the residency program at Tulane, Respondent was evaluated by Richard S. Epstein, M.D., a psychiatrist. The report, dated February 7, 2008, is addressed to an attorney in New Orleans. Dr. Epstein wrote that he completed a psychiatric evaluation of Respondent "for the purpose of determining whether he suffers from a psychiatric condition that adversely impacts on his ability to practice as a physician and neurosurgical resident in a safe and competent way." In addition to examining Respondent, Dr. Epstein interviewed numerous co-workers, family members, and friends.

Dr. Epstein's diagnosis was as follows:

1. Adult Attention Deficit Disorder – well managed on medication. This condition has no functional effect on his ability to function as a physician.
2. No evidence for Personality Disorder

3. No evidence for any impairment as a result of a psychiatric disorder.

Dr. Epstein concluded that Respondent had no “mental condition that could impair his ability to function as a physician.” Two supplemental reports, dated February 13 and April 1, 2008, were consistent.

25. Diane H. Wolfe, M.D., conducted a psychiatric evaluation of Respondent in connection with the Board’s Order referenced in Findings 5 and 6, above. The evaluation was conducted on September 24 and December 5, 2012. Respondent reported to Dr. Wolfe that he was taking 30 mg of Adderall, IR (immediate release), five times daily and Prozac for depression. He also took .5 mg Clonazepam for anxiety approximately once each week as needed.

Dr. Wolfe’s evaluation included a telephone interview with Dr. Gibson. She reported that Dr. Gibson was “somewhat vague in some answers, especially in exploring the reasons for increasing doses of medication” but that he also said that Respondent had been at the dosage level for an extended period and that the “dose was not unusually high for [Dr. Gibson’s] patient population.”

26. Dr. Wolfe’s diagnosis/prognosis was as follows:

- I Attention deficit disorder

- II No evidence for personality disorder

[Respondent’s] ADD appears to be responsive and generally well managed on his current medication regimen. I find no evidence of use of stimulant medication outside of prescriber guidance or for uses other than the management of ADD related symptoms. I find no evidence for performance compromising side effects of the current dose of medication.

I find no evidence for abuse of other substances.

I find no evidence for impairment in judgment or impulsivity which would compromise [Respondent’s] ability to practice medicine safely.

27. Further regarding Respondent’s stimulant use, Dr. Wolfe wrote:

While there may be some difference of opinion among psychiatrists as to the necessity and benefit of prescribing psychostimulant medications at substantially higher than recommended doses, Dr. Gibson’s verbal report and medical

records support a finding that [Respondent] has been compliant with medication and has not increased usage without the consent of his treating physician. While one would hypothesize that clinical attention to other factors contributing to difficulties with concentration may lessen the needed dose of Adderall, I do not find evidence for abuse or non-compliant use of medication. Dr. Gibson has a long treatment history with this patient at the current medication doses.

Dr. Wolfe concluded that Respondent's "ability to practice medicine safely is not impaired by mental illness."

28. Dr. Gibson's latest prescription for Adderall, which Respondent takes, is 30 mg, six times daily. The recommended dose is 40 mg per day, taken in two doses of 20 mg each. The total daily amount of 180 mg is over four times the maximum recommended dose. Dr. Gibson also prescribes Clonazepam for situational anxiety and Respondent has taken it concurrently with Adderall.

- CURRENT PSYCHIATRIC EVALUATION: DR. SALMA KHAN

29. Salma Khan, M.D., is a board certified psychiatrist. She is also certified in addiction medicine by the American Society of Addiction Medicine. Dr. Khan has been licensed as a physician in California since 1995. Her curriculum vitae identifies her professional interests to include teaching basic psychiatry to Stanford Medical School students; electroconvulsive therapy, in which she has received special training; forensic topics, including work with Death Row residents at San Quentin State Prison; and psychiatric emergencies. Currently, Dr. Khan is a Staff Psychiatrist with the California Department of Corrections and Rehabilitation. Since 1998, she has also conducted a private practice. Dr. Khan does not treat patients with ADD, nor does she have any specialized training or experience with that disorder.

30. On April 4, 2017, Dr. Khan interviewed Respondent pursuant to an Order for a Mental Evaluation issued by the Board. The session lasted almost six hours, including time spent by Respondent filling out questionnaires and breaks. Dr. Khan reviewed copious documents in connection with her evaluation, including the two previous evaluations described above, Dr. Gibson's records, police reports and criminal court records, Board records and information and articles submitted by Respondent. Her very comprehensive and detailed report is 70 pages long and is dated May 22, 2017.

31. Respondent was over two hours late for the appointment. He had taken the bus from Reno to Dr. Khan's San Francisco office. She described him as appearing unkempt and anxious. She noted he had no explanation for why he was late. Dr. Khan was concerned with lesions visible on Respondent's shins (he was not wearing socks.) He told her that they were the result of an episode of necrotizing fasciitis in 2015, but she suspected that they were caused by intravenous drug use. Respondent's behavior during the evaluation was of concern.

Respondent was

overly deferential and polite throughout the interview. He had an odd demeanor and spoke in a halting manner. He talked in short sentences. He had involuntary muscle twitching in his head and neck. He had a moderate resting tremor. He also had a moderate bilateral intention tremor.^[6]

32. Respondent told Dr. Khan he was stressed out, but denied being clinically depressed. He completely denied all of the allegations in the accusation and addiction to controlled substances. Dr. Khan found Respondent's descriptions of his work history and other activities lacking in credibility; some of the jobs he identified as employment were volunteer positions, and volunteer positions were identified as post-graduate training without justification. She believed that Respondent was deceptive.

33. Dr. Khan determined that the Board's accusations

are all explained by [Respondent] being an addict whose tolerance has gone up and whose supply has gone down. He has resorted to diverting drugs and stealing prescriptions to fulfill his drug habit. The prescription stimulants and benzodiazepines can affect mood and personality. They can cause irritability, anxiety, agitation, depression. In withdrawal, they can cause anxiety, depression, confusion, insomnia, poor concentration, and other neurovegetative changes. Both the Adderall and the Clonazepam may be mixed with unknown supplements to cause cardiac, endocrine problems, and other medical problems.

She opined that Respondent

has a long-standing prescription drug addiction and is dependent on Adderall, which is a prescription stimulant, and Clonazepam, which is a prescriptive sedative and anti-anxiety agent. He has a known history of major depressive disorder, and he may have a cluster B personality disorder with antisocial and narcissistic traits.

34. Dr. Khan opined that Respondent's addiction "impacts his ability to engage in the practice of medicine safely" and recommended suspension of his medical license. Dr. Khan recommended an extensive course of addiction treatment, including in-patient medical detoxification followed by 90 days of in-patient treatment, followed by residency in a sober living environment and additional treatment including psychotherapy. In light of the physical

⁶ An intention tremor is a slow tremor of the extremities that increases on attempted voluntary movement.

symptoms she observed, such as the tremors, she also recommended a complete physical and neurological examination.

35. Whether or not Dr. Khan's conclusions are correct regarding the connection between Respondent's unprofessional conduct and an addiction to controlled substances, her opinion that the public safety is in jeopardy by Respondent's practice as a physician is persuasive. Her review of Respondent's history and observations during examination provided a solid underpinning for her conclusions that Respondent requires intensive addiction treatment and is unsafe to practice medicine at this time.

Criminal case

36. Respondent is pending disposition of criminal charges filed in the San Mateo County Superior Court. On September 30, 2016, the Court issued a restriction of practice order (Penal Code section 23) precluding Respondent from possessing or prescribing any controlled substances for the duration of the criminal proceeding.

37. On March 9, 2017, probable cause was found and Respondent was held to answer on a complaint charging him with eight felonies, including two counts of Penal Code section 460, subdivision (b) (commercial burglary); two counts of Penal Code section 530.5, subdivision (a) (identity theft); two counts of Health and Safety Code section 11173, subdivision (a) (obtaining controlled substance by fraud); and two counts of Health and Safety Code section 11368 (forged prescription).

38. As of the date of this hearing, a jury trial had been scheduled but had not commenced.

Respondent's testimony

39. Respondent appeared eager to testify, and attempted to answer the questions that were posed. But his testimony was somewhat hard to follow, as he spoke very rapidly and in a somewhat disjointed manner.

40. As first reported above, Respondent denied trying to illegally obtain drugs for himself at Walgreens. When a pharmacist told him that prescription scripts he was using were reported stolen, he did not argue and left the pharmacy. Respondent said that there was an issue with his own stolen or missing pads. He received a fax from another Walgreens that one of his pads had been stolen and used to attempt to obtain a prescription for Xanax.

41. Respondent does not agree that he needs treatment for addiction. He argues that Dr. Khan is not an expert in ADD, and does not understand his need for the drugs. He believes that without the Adderall, he "would revert to how [he] was before [he] was diagnosed." ADD does not just affect his ability to perform academically; it affects his ability to function all of the time.

42. Respondent asserts that the purpose of Clonazepam is not to come down from Adderall. He developed a lot of anxiety around not being able to work, particularly after his experience at Tulane. And his employment at the POHC also caused him great anxiety and stress. Clonazepam helps him cope with these issues.

43. Respondent offered that his former wife was a drug addict and was addicted to Xanax. Medications were prescribed by her physicians, but Respondent wrote her prescriptions for migraine medication and Clonazepam before he knew he was not allowed to do so.

LEGAL CONCLUSIONS

1. Unprofessional conduct is grounds for discipline of a physician's certificate pursuant to Business and Professions Code section 2234. Complainant alleges that Respondent committed unprofessional conduct by violating provisions of the Medical Practice Act (Bus. & Prof. Code, § 2234, subd. (a)); dishonest acts substantially related to the activities of a physician (Bus. & Prof. Code, § 2234, subd. (e)); violating drug laws (Bus. & Prof. Code, § 2238); prescribing for a person not under treatment (Health & Saf. Code, § 11154); issuance of a false prescription (Health & Saf. Code, § 11157); self-prescribing (Health & Saf. Code, § 11170); obtaining or attempting to obtain a controlled substance by fraud (Health & Saf. Code, § 11173, subd. (a)); and making a false statement in a prescription (Health & Saf. Code, § 11173, subd. (b)).

As set forth in Findings 12 through 21, the evidence established that Respondent violated these provisions. Cause for license discipline for unprofessional conduct exists for the violations.

2. Complainant also alleged that Respondent committed unprofessional conduct by use of drugs or alcohol in a self-injurious or dangerous manner (Bus. & Prof. Code, § 2239, subd. (a)); falsely assuming the title of or representing oneself as a physician (Health & Saf. Code, § 11173, subd. (c)); and affixing a false label on a package containing controlled substances (Health & Saf. Code, § 11173, subd. (d)). These allegations were not proven to the required legal standard; cause for license discipline does not exist pursuant to these provisions.

3. Business and Professions Code section 822 provides:

If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licentiate's certificate or license.
- (b) Suspending the licentiate's right to practice.
- (c) Placing the licentiate on probation.

- (d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper.

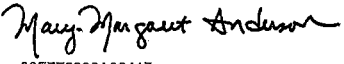
By reason of the matters set for in Findings 22 through 35, it was established that Respondent's mental condition impairs his ability to safely practice medicine. Cause for limitations on Respondent's medical certificate therefore exists pursuant to Business and Professions Code section 822.

4. It is acknowledged that another psychiatrist found Respondent safe to practice approximately five years ago. But in the intervening time, Respondent's functioning has deteriorated. His actions at the Walgreens pharmacy show, at a minimum, an acute lack of judgment. His physical condition has also worsened; he exhibits alarming physical symptoms consistent with drug dependency and/or withdrawal. Respondent completely denies any wrongdoing and any problems with his dependence upon, if not addiction to, two controlled substances. Before Respondent can safely practice medicine, he requires treatment and he denies any such need. And his violations of the drug laws demonstrate that he poses a threat to the public safety independent of whether he suffers from a mental condition affecting competency. All things considered, the public safety requires revocation of Respondent's medical certificate at this time.

ORDER

Physician's and Surgeon's Certificate No. A90620, issued to Respondent Vahe Sarkissian, M.D., is revoked.

DATED: July 26, 2017

DocuSigned by:

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MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings

XAVIER BECERRA
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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation
Against:

Vahe Sarkissian, M.D.

**1445 Gaucho Lane
Reno, NV 89521-5183**

**Physician's and Surgeon's Certificate
No. A90620,**

Respondent.

Case No. 800-2016-025851

FIRST AMENDED ACCUSATION

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about March 25, 2005, the Medical Board issued Physician's and Surgeon's Certificate Number A90620 to Vahe Sarkissian, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2018, unless renewed.

///

JURISDICTION

3. This First Amended Accusation is brought before the Medical Board of California (Board), under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation, be publicly reprimanded, and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

5. Section 2234 of the Code, states in relevant part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

6. Section 2238 of the Code states:

A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

7. Section 2239(a) of the Code states:

"The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any

1 combination thereof, constitutes unprofessional conduct. The record of the conviction is
2 conclusive evidence of such unprofessional conduct.”

3 8. Section 11153 of the Health and Safety Code, states in relevant part:

4 “(a) A prescription for a controlled substance shall only be issued for a legitimate medical
5 purpose by an individual practitioner acting in the usual course of his or her professional
6 practice...”

7 9. Section 11154 of the Health and Safety Code, states:

8 “(a) Except in the regular practice of his or her profession, no person shall knowingly
9 prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal
10 which is not under his or her treatment for a pathology or condition other than addiction to a
11 controlled substance, except as provided in this division.

12 “(b) No person shall knowingly solicit, direct, induce, aid, or encourage a practitioner
13 authorized to write a prescription to unlawfully prescribe, administer, dispense, or furnish a
14 controlled substance.”

15 10. Section 11157 of the Health and Safety Code, states:

16 “No person shall issue a prescription that is false or fictitious in any respect.”

17 11. Section 11170 of the Health and Safety Code, states:

18 “No person shall prescribe, administer, or furnish a controlled substance for himself.”

19 12. Section 11173 of the Health and Safety Code, states:

20 “(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt
21 to procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
22 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

23 “(b) No person shall make a false statement in any prescription, order, report, or record,
24 required by this division.

25 “(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the
26 title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist,
27 veterinarian, registered nurse, physician’s assistant, or other authorized person.
28

1 “(d) No person shall affix any false or forged label to a package or receptacle containing
2 controlled substances.”

3 13. California Code of Regulations, title 16, section 1360, states:

4 “For the purposes of denial, suspension or revocation of a license, certificate or permit
5 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
6 considered to be substantially related to the qualifications, functions or duties of a person holding
7 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
8 evidences present or potential unfitness of a person holding a license, certificate or permit to
9 perform the functions authorized by the license, certificate or permit in a manner consistent with
10 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
11 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
12 violation of, or conspiring to violate any provision of the Medical Practice Act.”

13 14. Section 820 of the Code states:

14 “Whenever it appears that any person holding a license, certificate or permit under this
15 division or under any initiative act referred to in this division may be unable to practice his or her
16 profession safely because the licentiate's ability to practice is impaired due to mental illness, or
17 physical illness affecting competency, the licensing agency may order the licentiate to be
18 examined by one or more physicians and surgeons or psychologists designated by the agency.
19 The report of the examiners shall be made available to the licentiate and may be received as direct
20 evidence in proceedings conducted pursuant to Section 822.”

21 15. Section 822 of the Code states:

22 “If a licensing agency determines that its licentiate’s ability to practice his or her profession
23 safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the
24 licensing agency may take action by any one of the following methods:

25 “(a) Revoking the licentiate’s certificate or license.

26 “(b) Suspending the licentiate’s right to practice.

27 “(c) Placing the licentiate on probation.
28

1 "(d) Taking such other action in relation to the licentiate as the licensing agency in its
2 discretion deems proper.

3 "The licensing agency shall not reinstate a revoked or suspended certificate or license until
4 it has received competent evidence of the absence or control of the condition which caused its
5 action and until it is satisfied that with due regard for the public health and safety the person's
6 right to practice his or her profession may be safely reinstated."

7 FACTS

8 16. On March 29, 2016, Respondent was contacted by law enforcement and found to be
9 in possession of eight (8) Clonazepam (a benzodiazepine which is a schedule IV controlled
10 substance) pills that were in an unlabeled prescription bottle with no evidence of a lawful
11 prescription. Law enforcement noted that Respondent was acting "amped" and "erratic" as if he
12 was possibly under the influence of a controlled substance. Respondent was placed under arrest
13 for a violation of Business and Profession Code section 4060 (unlawful possession of a controlled
14 substance).

15 17. On August 14, 2016, at approximately 9:45 p.m., Respondent attempted to pick up
16 fraudulent Clonazepam and Phentermine (a schedule IV controlled substance and an
17 amphetamine) prescriptions, written by Respondent under the name of a fictitious patient at
18 Walgreens Pharmacy located at 2238 Westborough Blvd. in South San Francisco. The
19 prescriptions were called in earlier that evening by a male caller who represented himself to be
20 another physician (Dr. P), who also provided a physician DEA number. Respondent was not
21 successful in obtaining the fraudulent prescriptions after arguing with the pharmacy staff and
22 finally left the store.

23 18. On August 18, 2016, at approximately 1:58 a.m., Respondent attempted to obtain
24 Jardiance (a drug used to treat diabetes) and Cytomel (a drug used to treat thyroid conditions)
25 prescriptions for patient "S.S." by submitting a stolen/fraudulent prescription scrip to the same
26 Walgreens Pharmacy. The prescription contained the names of another physician (Dr. B) and a
27 Physician's Assistant (P.A.), located at 3 South Linden Ave. in South San Francisco. Again,
28

1 Respondent was unsuccessful in obtaining the fraudulent prescriptions and left the store.

2 Respondent was captured on Walgreens surveillance video on both occasions.

3 19. Through the investigation, law enforcement learned that Respondent was employed
4 by Pacific Occupational Health Clinic (POHC) located 3 South Linden Ave. in South San
5 Francisco. POHC also employed P.A. and had formerly employed both Dr. P and Dr. B. Dr. P
6 was later contacted by law enforcement and it was determined that the prescriptions Respondent
7 attempted to obtain from Walgreens on August 14, 2016, were fraudulent and Dr. P had never
8 called in or otherwise authorized the prescriptions. However, the DEA physician number the male
9 caller provided to Walgreens was indeed associated to Dr. P. Dr. P stated that this was the third
10 incident in the past eight months involving fraudulent phone prescriptions in his name to the same
11 Walgreens Pharmacy in South San Francisco.

12 20. P.A. was also contacted by law enforcement and indicated he knew Respondent as a
13 physician employed at POHC. P.A. revealed that the prescription scrip that Respondent
14 attempted to use was unauthorized and had been previously stolen from POHC. The stolen
15 prescription pad had included 25-30 pages. P.A. indicated this was not the first time the stolen
16 pad had turned up in fraudulent prescriptions. On August 26, 2016, Respondent was contacted at
17 POHC and subsequently arrested. In his wallet, law enforcement located two prescriptions from
18 the stolen prescription pad associated with Dr. B and P.A. Also located in Respondent's briefcase
19 were three prescription bottles, including two bottles of Invokana (a drug used to treat diabetes)
20 and one bottle of Liothyronine Sodium (a.k.a. Cytomel). The bottles indicated the prescriptions
21 were issued to patients by Respondent as the prescribing physician on August 26, 2016.

22 21. Respondent was charged in San Mateo Superior Court, Case No. 16-NF-011562-A,
23 with eight (8) felony counts, including Penal Code section 460(b) (two counts), Penal Code
24 section 530.5(a) (two counts), Health and Safety Code section 11173(a) (two counts), and Health
25 and Safety Code section 11368 (two counts). On September 30, 2016, the San Mateo Superior
26 Court issued a restriction of practice order, whereby Respondent is precluded from possessing or
27 prescribing any controlled substances for the duration of the criminal proceeding. On March 9,
28

1 2017, the San Mateo County Superior Court found probable cause to hold Respondent to answer
2 on all felony counts. The matter is currently set for trial by jury on July 17, 2017.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct: Dishonest or Corrupt Act/Violation of Drug Laws)**

5 22. Paragraphs 16 through 21 are incorporated herein.

6 23. Respondent Vahe Sarkissian, M.D. is guilty of unprofessional conduct and his
7 certificate is subject to disciplinary action under Business and Profession Code sections 2234,
8 and/or 2234(a), and/or 2234(e), and/or 2238, and/or 2239(a), and/or Health and Safety Code
9 sections 11153, and/or 11154, and/or 11157, and/or 11170, and/or 11173, and/or California Code
10 of Regulations, title 16, section 1360, by reason of his dishonest and corrupt acts of entering
11 Walgreens pharmacy and attempting to obtain a controlled substance by way of fraud, deceit and
12 misrepresentation for his own use, and attempting to fill prescriptions he knew were false and
13 issued to patients not under his care and not issued for a legitimate medical purpose.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Mental/Physical Impairment)**

16 24. Paragraphs 16 through 21 are incorporated herein.

17 25. Respondent Vahe Sarkissian, M.D. is subject to disciplinary action under 822 of the
18 Code, in that he has been diagnosed with multiple substance use disorders and major depressive
19 disorder, and is unable to practice medicine safely. The circumstances are as follows:

20 26. On April 4, 2017, Respondent was evaluated by a psychiatrist retained by the Board
21 for that purpose. On May 22, 2017, the psychiatrist provided her report, which contains her
22 findings, opinions and conclusions regarding Respondent's fitness to practice medicine. During
23 the evaluation, Respondent admitted that for the past fifteen (15) years he has been taking
24 massive daily doses of Adderall, a prescription stimulant and Schedule II controlled substance,
25 for the treatment of Attention Deficit Hyperactivity Disorder. Respondent's dose of Adderall 30
26 mg six times a day is four and a half times higher than the FDA maximum recommended dose of
27 Adderall. Respondent revealed that for the past two years he has concurrently been taking
28 Clonazepam, a prescription sedative/anti-anxiety agent and Schedule IV controlled substance, for

1 the treatment of anxiety. Respondent was taking high doses of Adderall even while unemployed
2 for long periods of time. The evaluator noted that Respondent neglected to mention his long
3 history of being treated for Major Depressive Disorder, and she found him to be misleading and
4 deceptive.

5 27. The evaluator noticed Respondent possessed a prominent bilateral upper-extremity
6 resting and intention tremor, likely secondary to Adderall. She observed that Respondent
7 appeared thin, pale and anxious, accompanied by an unusual neck twitch. The evaluator opined
8 that these physical conditions, in conjunction with Respondent consuming extremely high doses
9 of prescription stimulants, having several police contacts in recent years, his admittance to the
10 emergency room with an altered mental state and cardiac symptoms, and failing to inform his
11 treating psychiatrist of using thyroid supplements are all indicative of addiction.

12 28. The evaluator described the circumstances leading to the arrest of Respondent and the
13 allegations contained herein are all explained by his "being an addict whose tolerance has gone up
14 and whose supply has gone down. He has resorted to diverting drugs and stealing prescriptions to
15 fulfill his drug habit." The evaluator diagnosed Respondent with Prescription Stimulant
16 Intoxication Syndrome, Prescription Stimulant (Adderall) Use Disorder, Prescription
17 Benzodiazepine (Clonazepam) Use Disorder, and Major Depressive Disorder. She also indicated
18 that Personality Disorder with anti-social and narcissistic traits cannot be ruled out at this time,
19 but a determination cannot be reached as to all of Respondent's psychiatric diagnoses due to the
20 fact that both Adderall and Clonazepam were in Respondent's system at the time of the
21 evaluation. The evaluator concluded that Respondent is "unable to safely practice medicine at
22 this time as a result of a mental illness, prescription stimulant, and benzodiazepine addiction" and
23 that his "continued practice of medicine poses a substantial danger or threat to the public health,
24 welfare or safety."

25 DISCIPLINARY CONSIDERATIONS

26 29. To determine the degree of discipline, if any, to be imposed on Respondent Vahe
27 Sarkissian, M.D., Complainant alleges that on or about August 24, 2012, in a prior disciplinary
28 action entitled *In the Matter of the Accusation Against Vahe Sarkissian, M.D.* before the Medical


1 Board of California, in Case Number Case No. 12-2012-221480, Respondent's license was
2 revoked for one year, revocation stayed, and Respondent was ordered to comply with the Order
3 Compelling Mental Examination (Order) based on Respondent's failure to comply with the
4 original Order. The original Order was issued on December 19, 2011 in a prior disciplinary
5 action against Respondent before the Medical Board of California in Case No. 16-2008-196491,
6 and was based on an out of state suspension order from the State of Louisiana alleging
7 Respondent was unable to practice medicine with skill and safety due to psychiatric disorders and
8 chemical dependency; engaged in unprofessional conduct by withholding information requested
9 by an Investigator Officer appointed by the Louisiana State Board of Medical Examiners for
10 approximately nine weeks; and provided sworn, false, misleading and deceitful responses on his
11 original application to the Louisiana State Board of Medical Examiners. Those decisions are now
12 final and incorporated by reference as if fully set forth herein.

13 **PRAYER**

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board issue a decision:

- 16 1. Revoking or suspending Physician's and Surgeon's Certificate Number A90620,
17 issued to Vahe Sarkissian, M.D.;
- 18 2. Revoking, suspending or denying approval of Vahe Sarkissian, M.D.'s authority to
19 supervise physician assistants and advanced practice nurses;
- 20 3. Ordering Vahe Sarkissian, M.D., if placed on probation, to pay the Board the costs of
21 probation monitoring; and
- 22 4. Taking such other and further action as deemed necessary and proper.

23
24 DATED: June 7, 2017


25 KIMBERLY KIRCHMEYER
26 Executive Director
27 Medical Board of California
28 State of California
Complainant

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